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REPORT OF THE
GOVERNOR'S TASK FORCE ON
COUNTY AND MUNICIPAL LEGISLATIVE POWERS
"TILLIE FRANK"

January 26, 1983

The Honorable Harry Hughes
Governor
State of Maryland
State House
Annapolis, Maryland 21401-1955

Dear Governor Hughes:

Transmitted herewith is the Report of the "Tillie Frank" Task Force, and a recommended bill on the subject of county-municipal legislation.

The Report is supplemented by supplemental remarks filed by Delegates David Bird and Bert Booth, and by a letter to me from the three mayors who served on the Task Force.

Exhibit A to the Report is the proposed bill we recommend. Exhibit B is a critique of part of the proposed bill prepared by the Maryland Municipal League.

All of us on the Task Force found the problems you asked that we consider challenging. We generally agree that the proposed bill is a workable solution, although each constituency is only partly satisfied with the result.

Respectfully yours,

M. Peter Moser

M. Peter Moser
Chairman

REPORT OF TILLIE FRANK TASK FORCE

January 18, 1983

To: Honorable Harry Hughes
Governor of the State of Maryland

In October, 1982 Your Excellency appointed this Task Force with the following directions:

> The decision of the Maryland Court of Appeals last fall, in a case popularly referred to as the "Tillie Frank Case", has altered the past relationship between enactments of home rule counties and municipalities. During the 1982 General Assembly session, attempts were made to develop legislative solutions which would be acceptable.
>
> To make certain that appropriate legislation may be submitted to the 1983 General Assembly, I am establishing the "Tillie Frank" Task Force.

We are pleased to report that a majority of the Task Force recommends the enactment of the Proposed Bill attached as Exhibit A to this Report.

THE TILLIE FRANK OPINIONS

Until the Tillie Frank decision, it was believed by many people that county laws on matters which were within the powers of municipalities in that county were not applicable in the municipalities, at least where the municipal ordinances conflicted with the county legislation. This conclusion was based on the "Shepherd amendment," appearing as a part of Article XI-A, Section 3, of the Maryland Constitution, and underscored below:

> From and after the adoption of a charter... the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said...County including the power to repeal or amend local laws of said...County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto.

Town of Forest Heights v. Tillie Frank, 291 Md. 331 (1981), involved a conflict between municipal ordinances which absolutely prohibited fortune telling within two municipalities located in Prince George's County and a County law providing for the licensing of a limited number of fortune tellers at specific locations anywhere in the County. Under the County law, licenses had been granted to Frank and others for locations within the boundaries of the municipalities whose ordinances absolutely forbade fortune telling.

The Court of Appeals held (4 to 3) that the municipal ordinance were invalid since they directly conflicted with the Prince George's County law. Reasoning that when a county adopts a charter, all the General Assembly's power to enact public local laws is transferred exclusively to the county, the majority found that where a county local law conflicts with a municipal ordinance enacted under the municipality's general police power, the county law prevails, just as would a law of the General Assembly. Thus, Frank

could tell fortunes within the municipalities even though the municipal ordinances prohibited this activity. All that the Shepherd amendment did, reasoned the majority, was to require that public local laws enacted by a county apply within all municipalities.

This meaning accorded the Shepherd amendment, felt two of the dissenting judges, ignored not only the plain language of the amendment, but also the purpose of the law as announced by Senator Shepherd, its principal proponent: to prevent county interference with municipalities. See 291 Md. 364-365, Smith J., dissenting.

Chief Judge Murphy in his dissenting opinion described the relationship between counties and municipalities within their borders and the relationship between the State and the counties and between the State and incorporated municipalities as follows:

> Historically, in Maryland, counties and municipalities have been regarded as coequal political subdivisions of the State, each exercising a portion of the State's delegated governmental powers connected with the administration of local government within its respective sphere of operation. Neither unit of local government is possessed of inherent police power and neither is legislatively superior to the other. They are separate and distinct governmental entities, operating on different and independent tracks, although they derive all of their powers from the same source, i.e., from the State through enactments of the General Assembly of Maryland or pursuant to provisions contained in the Maryland Constitution. (Citations omitted).

Left open by Tillie Frank was the question of which law prevails in the case of conflicting county and municipal legislation where the power of the municipality to enact the ordinance is based upon the specifically delegated powers in subparagraphs (1) to (33) of Article 23A, §2, rather than upon the general police power grant in the first paragraph of §2.

In the 1982 General Assembly session, bills seeking to change the effect of Tillie Frank failed to pass. Certain last-minute amendments had, however, been approved by representatives of the municipalities and the counties to make the bills acceptable to them.

HOW WE PROCEEDED

Five Task Force meetings and several additional drafting sessions and discussions with legislators and the drafting committee of the Task Force were held beginning November 17, 1982 through January 6, 1983. First, the Task Force reviewed the history of the Tillie Frank case; considered bills and amendments to bills in the 1982 General Assembly; reviewed alternate provisions submitted after the General Assembly to the chairperson of the House Constitutional and Administrative Law Committee (Delegate Koss) and to Majority Leader Robertson; analyzed the practical effect of Tillie Frank on county and municipal legislation; considered whether any remedial legislation the Task Force might propose should apply to non-charter counties, and if so, how this could be done without needlessly extending the

Tillie Frank decision beyond its holding; and reviewed background material which had been prepared by the Maryland Municipal League, the Maryland Association of Counties and others. The Task Force concluded the following:

1. It is highly desirable that a bill changing the effect of the Tillie Frank decision be enacted as soon as possible.

2. A constitutional amendment is not needed. See unpublished Attorney General Opinion dated March 4, 1982 to Honorable Robert S. Redding.

3. An informal drafting committee should be appointed to prepare and amend working drafts and to submit draft provisions to the full Task Force and other interested persons for consideration.

4. The starting point should be House Bill 1400/1982, changed to include the additional amendments which had been agreed upon between representatives of MACO and the Municipal League in the closing days of the 1982 session, and this became a first Working Draft.

5. The informal drafting committee, consisting of Delegate Bird, Mr. Ostrum (County representative), Mr. Titus (Municipalities' representative), Mr. Zarnoch (Assistant Attorney General) and Mr. Moser, should confer with Delegates Koss and Robertson to determine what had been the objections which resulted in the defeat of the 1982 proposals and what problems these Delegates believed that the bill should resolve.

6. Working drafts should be reviewed with the boards or legislative committees of the Municipal League and MACO and with Delegates Robertson and Koss.

During the ensuing weeks, The concepts and actions set forth above were carried forward. Revisions were made to the first Working Drafting following detailed comments by Delegates Koss and Robertson, the Municipal League and MACO. In December, Delegates Robertson and Koss presented an alternative draft which the Task Force also distributed for comment and carefully considered.

POSITIONS OF MUNICIPAL LEAGUE AND MACO

The Task Force was informed by the Municipal League Executive Director that the League Board approved, with reservations, what now constitutes Section 2A, subsections (a) and (b)(1) and (2) in the Proposed Bill (Exhibit A) but disapproved the provision (hereinafter "Emergency Provision"), which now constitutes Section 2A, subsections (b)(3), (b)(4) and (c) of the Proposed Bill.

The Emergency Provision was prepared in an effort to satisfy reservations shared by Delegates Robertson and Koss and others that counties might need to legislate countywide in extraordinary emergency circumstances and have the laws apply in municipalities notwithstanding conflicts with municipal ordinances or exemptions by municipalities from county legislation. Ultimately, a plurality of the Task Force concluded that the Emergency Provision is desirable, and included it in the Proposed Bill.

Because the Municipal League representatives on the Task Force voted against including the Extraordinary Provision in the Bill, the Executive Director's comments on that provision are attached as Exhibit B.

The Legislative Committee of MACO would not oppose the Proposed Bill, we are told, and the county representatives on the Task Force all approved the Proposed Bill. However, the Legislative Committee of MACO expressed a preference that the problem be worked out separately by each county with its municipalities and for the present there should be no general law on the subject. The Task Force does not agree that such an approach would be effective in all counties, although Montgomery County has sought to resolve the problem by a County law.

RATIONALE FOR PROPOSED BILL

It is clear that many municipalities have played, and continue to play a vital role in Maryland government. In some counties, municipalities provide most of the local services available both within and outside of the municipalities. In many other counties, municipalities provide certain governmental services, such as sewage and water, which would not otherwise be available to the residents of the municipalities, since the counties do not provide these services. It is also true that many municipal governments afford their residents a feeling of having a greater say in the police power regulations controlling them. While conflicts have developed, and surely will continue to occur, between the counties and municipalities, these conflicts are not frequent. Customarily, conflicts are resolved through

discussions between the county and municipal officials. The discussion of the Tillie Frank Minority opinions set forth earlier in this Report reflects these views.

In preparing the Proposed Bill, the Task Force has limited changes in the law to those that a majority believe are needed. The provisions of the Bill are relatively simple, and in our view, clear and workable. The majority also believes that the Proposed Bill will help county and municipal governments to resolve conflicts quickly and to deal more effectively with the needs and desires of their residents.

All these considerations, specifically including the helpful suggestions of Delegates Robertson and Koss, of the Municipal League and of MACO, have resulted in the selection of the provisions in the Proposed Bill.

PROPOSED BILL EXPLAINED

The Bill accepts the basic premise of the Tillie Frank case, i.e., that the term "public local laws" (see Md. Code, Art. 23A, ¢2) includes laws enacted by charter counties and code counties, as well as local laws enacted by the General Assembly. Accordingly, Section 2 of Article 23A is to be amended by inserting that "except as provided in (proposed new) Section 2A of this Article," municipalities have general power to pass ordinances which are not contrary to public local laws (including county public local laws).

Proposed new Section 2A (Applicability of County Legislation within Municipalities) sets out circumstances under which county legislation will not apply in municipalities. It is important to note that the opening of Section 2A, subsection (a) (General Rule) states only the circumstances when county legislation does not apply in a municipality and not the circumstances when county legislation does apply. It is intended that the rule of Tillie Frank and Section 2 of Article 23 A would initially control which county legislation does apply in municipalities. Municipal ordinances, by Section 2, are not to conflict with county public law except as Section 2A provides. Under subsection (a), county legislation is not to apply in a municipality where (1) an exemption of municipalities is provided in the county legislation itself, (2) a municipality enacts conflicting legislation, provided the municipality has the legal power to enact the legislation, or (3) the municipality exempts itself from county legislation, either specifically or in general, and either before or after enactment of the county legislation.

The Task Force cautions that muncipalities should exercise great care in exempting themselves from all county legislation by a general exemption. We are assured that municipalities will responsibly review all county legislation carefully first to determine what county laws should continue to apply in municipalities. Examples of county legislation whichvery often should continue to apply within municipalities are laws pertaining to public safety, such as fire and

police services, which in Prince George's County apply countywide. See Prince George's County Code, ¢18-142 (1981). The Task Force does not intend, that the Proposed Bill should in any way limit the ability of the county to provide services within municipalities or municipalities to provide services to or the use of cooperative agreements to furnish county or municipal services anywhere in a county.

The Task Force carefully considered, but did not select, an alternative subsection 2A(a) suggested by Delegates Robertson and Koss. Their suggestion was to provide in subsection 2A(a) that all county legislation applicable in municipalities. This proposal was examined at length during the last meeting of the Task Force. No member of the Task Force proposed it as a substitute. The reasons are that Section 2 already does this (see above), so the change seems unnecessary; and affirmatively providing for all county law to apply in all municipalities in the county extends further than the holding in the Tillie Frank case, and is confusing. Litigation surely would follow over whether municipal zoning, building and other codes conflict with similar county legislation. The Proposed Bill should avoid this.

The exceptions to the general rule provided in subsections (b) (1) and (2) make it clear that there is no intention by the Proposed Bill to affect other laws of the General Assembly (public general or public local) having an effect on the applicability of county legislation within municipal boundaries; that no change is intended in the provisions of Article 81; and that the counties may raise county revenues in municipalities.

Subsections 2A(b)3) and (c) (the Emergency Provision) were developed by the drafting committee after conferences with Delegates Koss and Robertson in an effort to meet the objections they and others had expressed to the overall compromise which had been essentially agreed upon by MACO and the Municipal League at the end of the 1982 General Assembly session.

The purpose of the Emergency Provision is to allow for the possibility that county legislation in rare and unusually important circumstances must be made applicable within the boundaries of municipalities in order to avoid having a significant adverse impact on residents of the county in unincorporated areas of the county. The provision requires special procedures to be followed by the county legislative body in order for the legislation to be effective and subjects the legislation to the opportunity of a special court test available solely to municipalities within the county. This court test is in addition to any presently available other rights of citizens or others to challenge the legislation, such as taxpayers' suits and referenda.

The county legislative body must hold a hearing upon not less than fifteen (15) days' notice, must make a specific finding based on evidence in the record at the hearing "that there will be a significant adverse impact on citizens of the county in unincorporated areas if such county legislation does not apply in all municipalities located in such county." Finally, the legislation must be

enacted by the affirmative vote of not less than two-thirds of the authorized membership of the county legislative body.

The special judicial review afforded only to municipalities is in the nature of an appeal from the county legislative body acting as an administrative agency, and must be filed within thirty (30) days of the effective date of the county legislation. The court hearing the appeal follows the rules applicable to an administrative appeal. The sole issues are satisfaction of the notice, hearing and extra-majority requirements, and the sufficiency of the evidence.

Subsection 2A(c) provides that subsections 2A(b)(3) and (4) do not apply at all if the municipality has legislation which (i) covers the same subject matter and furthers the same policies as the county legislation, (ii) is at least as restrictive as the county legislation, and (iii) includes provisions for its enforcement.

Subsection (d) (Enforcement of Municipal Legislation by a County) is intended to clarify that a municipality may request that a county administer municipal legislation within a municipality, but that the county may, but is not required to, accept this burden.

Finally, in subsection (e) (Definitions), it is made clear that "county" means noncharter as well as charter counties and that "legislation" encompasses all forms of county and municipal legislative enactment, including rules and regulations.

Section 2 of the bill amends the express powers act applicable in counties (Arts. 25, 25A and 25B) to parallel

the amendments made to Article 23A.

Section 3 leaves the effective date open. A weighted average of the votes of those voting by ballot for the Proposed Bill favored an effective date of either July 1, 1983, or January 1, 1984 in order to afford municipalities ample opportunity to enact legislation picking and choosing among county laws which should or should not apply within the municipal boundaries. However, some members favored an effective date of July 1, 1984; and the two members who ultimately disapproved the Proposed Bill because of its inclusion of the Emergency Provision would choose a July 1, 1985 effective date.

CONCLUSION

Other issues related to the Proposed Bill were raised by various Task Force members. For instance, a thorough study might be made of using classificiation of municipalities, perhaps on a different basis than population, as now permitted. Such issues are beyond the scope of our work and have no bearing on the practicability of the Proposed Bill. Although the Task Force had only two-and-one-half months to prepare the Proposed Bill, we are confident little improvement would come from further deliberations or study. Each of us was impressed with the depth of knowledge and practical experience evidenced by other Task Force members during our work.

We hope that the Proposed Bill will be introduced as an administration measure and enacted in the 1983 session.

Respectfully submitted,

The Honorable David Bird

The Honorable Bert Booth

The Honorable Galen R. Clagett

The Honorable Robert J. DiPietro

The Honorable B.W. Mike Donovan

Dr. Patricia S. Florestano

The Honorable Lloyd R. Helt, Jr.

The Honorable Wallace D. Miller

Robert B. Ostrom

The Honorable Neal Potter

The Honorable Norman R. Stone, Jr.

Roger W. Titus

The Honorable Ronald N. Young

Robert A. Zarnoch

M. Peter Moser, Chairman

SUPPLEMENT I

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

January 17, 1983

SUPPLEMENTAL REMARKS TO REPORT OF THE
TILLIE FRANK TASK FORCE

We, as members of the majority who support the legislation proposed by the Task Force, believe additional comments are required to supplement the main body of this report as drafted by the Chairman, Mr. Moser.

1. Next to nothing is said in the report about the majority opinion in the Tillie Frank case and its essential correctness. Having found a direct conflict between a municipal law and an act of a charter home-rule county, the Court of Appeals found that the county law must prevail - and rightly so. Municipalities have always been limited by public local law and an act of a home rule county within its express powers is a public local law. No other conclusion can be found since the legislature is prohibited by Article XI-A from passing public local laws for charter home-rule counties. To argue that the limitation of public local law on municipal enactments refers only to acts of the legislature would, as the Court pointed out, put municipal governments in home-rule counties in a stronger position than they are in non-home-rule counties. This is a result that would be clearly contrary to the purposes of county home-rule in Maryland.

For this reason, we believe it would have been preferable had the dissent been omitted, as conveying the impression that the Task Force opposed the decision, which was neither its charge nor inclination.

2. On page 1, it is indicated that most people believed the kinds of county law in question were not applicable in municipalities. We grant that some people did. However, practices varied throughout the State, and we really do not know what the majority practice has been.

3. Page 4, paragraph 2. In the 1982 General Assembly Session, bills seeking to change the effect of Tillie Frank certainly did fail, but not simply because of disagreement over last minute amendments. The disagreement was over the basic approach to county-municipal powers.

4. Page 6. Last line, 2nd paragraph, the word "Force" is omitted after "Task".

5. Page 11. 3rd line from bottom, "and" should be "in" to be faithful to draft bill.

Last sentence, 2nd paragraph, should be expanded to clarify what other rights are meant, e.g. the referendum.

6. Page 12, 1st full paragraph, the county legislative body is not acting as an administrative agency. What is meant is that the Court follows the rules dealing with appeals

from administrative agencies. It is a procedural matter for the Court, but is not intended to imply any limitation of the legislative body's powers.

7. References in the report to the part played by Delegates Koss and Robertson should make clear that they were attempting to follow the policy enunciated by the 1982 Constitutional and Administrative Law Committee when it acted on the legislation before it during the Session. Though the Delegates may have some personal concerns for logical, workable legislation and for the balance of power to remain with the counties, they did not act unilaterally.

8. We must realize that this draft does not solve all the technical problems; that there are many still to be worked out. Another draft, rejected by the Task Force was in substantial compliance with the Task Force draft, but dealt with some technicalities not discussed by the Task Force.

One major question not addressed is whether the county law becomes effective while an appeal is in progress.

The proposed legislation drafted by this Task reflects a great deal of compromise by all concerned; and, as with any compromise, no one is enthused about it and few are even happy with it. However, if this draft were law several years ago, the Court of Appeals would have reached a different conclusion in the Tillie Frank case. Further, the powers of municipalities

are greatly enhanced by this draft far in excess of what would be necessary to overturn the particular case at issue.

David P. Bird
Delegate David P. Bird

Bert Booth
Delegate Bert Booth

SUPPLEMENT II

January 17, 1983

Mr. Peter Moser
Chairman
Tillie Frank Task Force
State House
Annapolis, MD 21401

Dear Mr Chairman:

Please permit us to express further clarifying comments on the report that will be presented to the Governor which will contain the recommended draft bill of the Task Force.

It is our feeling that the position that was agreed to with the County Association near the end of the 1982 General Assembly session is a position for the cities and towns of Maryland that comes close to the pre Tillie Frank decision. The position, however, represented a major compromise for municipal governments in terms of historical perspective on municipal home rule and the Shephard Amendment to the Maryland Constitution. The compromise contained language concerning exemption criteria for municipalities which is encompassed in your draft as Section 2A (A) (3). The Maryland Municipal League agreed to this compromise and will remain committed to the compromise.

It is our feeling that the "Extraordinary Clause" of the draft bill goes further, still, in the direction of creating a new lesser form of local government called "municipal" and that is the primary reason why the municipal representatives of your task force voted against inclusion of the provision. We realize, however, that this provision is being retained as the best possible alternative, acceptable by your task force, that will address the concerns of some members of the General Assembly.

If the cities and towns of Maryland accept the task force draft, it is our feeling that this would be the furtherest point at which Maryland's cities would be able to compromise. On January 15, a decision on this was deferred by the Legislative Action Committee of the League until their meeting of January 26, 1983. We sense that further compromise beyond the task force draft would wreak havoc on the viability of city and town government in Maryland and would crystalize the cities to push strongly for the 1982 agreement with the counties and to fight for that agreement, or accept nothing at all.

It is our feeling that the majority in Tillie Frank was simply wrong from both a historical perspective and a factual perspective. We will not argue that here. However, we feel that the Task Force has the best opportunity to correct some of the wrong caused by the court. It is our hope that coequality of local governments in Maryland will continue as a result of the Task Force efforts.

Sincerely yours,

Robert J. DiPietro
Mayor of Laurel

Lloyd R. Helt, Jr.
Mayor of Sykesville

Ronald N. Young
Mayor of Frederick

EXHIBIT A

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 23A - Corporations - Municipal

2. Enumeration of express powers.

The legislative body of every incorporated municipality in this State, except Baltimore City, by whatever name known, shall have general power to pass such ordinances not contrary to the public general or, EXCEPT AS PROVIDED IN SECTION 2A OF THIS ARTICLE, public local laws and the Constitution of Maryland as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; but nothing in this article shall be construed to authorize the legislative body of any incorporated municipality to pass any ordinance which is inconsistent or in conflict with any ordinance, rule or regulation passed, o. ained or adopted by the Maryland-National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission, and nothing in this article shall be taken or construed to affect, change, modify, limit or restrict in any manner any of the corporate powers of the Mayor and City Council of Baltimore which it now has or which hereafter may be granted to it.

* * *

2A. APPLICABILITY OF COUNTY LEGISLATION WITHIN MUNICIPALITIES.

(A) GENERAL RULE. EXCEPT AS PROVIDED IN SUBSECTION (B), LEGISLATION ENACTED BY A COUNTY DOES NOT APPLY IN A MUNICIPALITY LOCATED IN SUCH COUNTY IF THE LEGISLATION:

(1) BY ITS TERMS EXEMPTS THE MUNICIPALITY;

(2) CONFLICTS WITH LEGISLATION OF THE MUNICIPALITY ENACTED UNDER A GRANT OF LEGISLATIVE AUTHORITY PROVIDED EITHER BY PUBLIC GENERAL LAW OR ITS CHARTER; OR

(3) RELATES TO A SUBJECT WITH RESPECT TO WHICH THE MUNICIPALITY HAS A GRANT OF LEGISLATIVE AUTHORITY PROVIDED EITHER BY PUBLIC GENERAL LAW OR ITS CHARTER AND THE MUNICIPALITY, BY ORDINANCE OR CHARTER AMENDMENT HAVING PROSPECTIVE OR RETROSPECTIVE APPLICABILITY, OR BOTH:

(I) SPECIFICALLY EXEMPTS ITSELF FROM SUCH COUNTY LEGISLATION; OR

(II) GENERALLY EXEMPTS ITSELF FROM ALL COUNTY LEGISLATION COVERED BY SUCH GRANTS OF AUTHORITY TO THE MUNICIPALITY.

(B) EXCEPTIONS TO GENERAL RULE. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A)(2) AND (A)(3) ABOVE, THE FOLLOWING CATEGORIES OF COUNTY LEGISLATION, IF OTHERWISE WITHIN THE SCOPE OF LEGISLATIVE POWERS GRANTED THE COUNTY BY THE GENERAL ASSEMBLY, SHALL NEVERTHELESS APPLY WITHIN ALL MUNICIPALITIES IN THE COUNTY:

(1) COUNTY LEGISLATION WHERE A LAW ENACTED BY THE GENERAL ASSEMBLY SO PROVIDES;

(2) COUNTY REVENUE OR TAX LEGISLATION, SUBJECT TO THE PROVISIONS OF ARTICLE 81; AND

(3) COUNTY LEGISLATION WHICH IS ENACTED IN ACCORDANCE WITH REQUIREMENTS OTHERWISE APPLICABLE IN SUCH COUNTY TO LEGISLATION THAT IS TO BECOME EFFECTIVE IMMEDIATELY AND WHICH ALSO MEETS THE FOLLOWING REQUIREMENTS:

(I) THE LEGISLATIVE BODY OF THE COUNTY MAKES A SPECIFIC FINDING BASED ON EVIDENCE OF RECORD AFTER A HEARING HELD IN ACCORDANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (II) HEREOF THAT THERE WILL BE A SIGNIFICANT ADVERSE IMPACT ON CITIZENS OF THE COUNTY IN UNINCORPORATED AREAS IF SUCH COUNTY LEGISLATION DOES NOT APPLY IN ALL MUNICIPALITIES LOCATED IN SUCH COUNTY;

(II) THE LEGISLATIVE BODY OF THE COUNTY CONDUCTS A PUBLIC HEARING AT WHICH ALL MUNICIPALITIES IN THE COUNTY AND INTERESTED PERSONS SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD, NOTICE OF WHICH IS GIVEN BY THE MAILING OF CERTIFIED MAIL NOTICE TO EACH MUNICIPALITY IN THE COUNTY NOT LESS THAN 15 DAYS PRIOR TO THE HEARING AND BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY FOR TWO SUCCESSIVE WEEKS, THE FIRST PUBLICATION TO BE NOT LESS THAN 15 DAYS PRIOR TO THE HEARING; AND

(III) THE COUNTY LEGISLATION IS ENACTED BY THE AFFIRMATIVE VOTE OF NOT LESS THAN TWO-THIRDS (2/3) OF THE AUTHORIZED MEMBERSHIP OF THE COUNTY LEGISLATIVE BODY.

(4) COUNTY LEGISLATION TO BE EFFECTIVE WITHIN MUNICIPALITIES WHICH IS ENACTED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN PARAGRAPH (B)(3) SHALL BE SUBJECT TO JUDICIAL REVIEW OF THE FINDING MADE UNDER SUBPARAGRAPH (3)(I) AND OF THE RESULTANT APPLICABILITY OF SUCH LEGISLATION TO MUNICIPALITIES IN THE COUNTY BY THE CIRCUIT COURT OF THE COUNTY IN ACCORDANCE WITH THE PROVISIONS OF THE MARYLAND RULES OF PROCEDURE

GOVERNING APPEALS FROM ADMINISTRATIVE AGENCIES. ANY APPEAL SHALL BE FILED WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF SUCH COUNTY LEGISLATION. IN ANY JUDICIAL PROCEEDING COMMENCED UNDER THE PROVISIONS OF THIS PARAGRAPH, THE SOLE ISSUES ARE WHETHER THE COUNTY LEGISLATIVE BODY (1) COMPLIED WITH THE PROCEDURES OF PARAGRAPH (B)(3), AND (2) HAD BEFORE IT SUFFICIENT EVIDENCE FROM WHICH A REASONABLE PERSON COULD CONCLUDE THAT THERE WILL BE A SIGNIFICANT ADVERSE IMPACT ON CITIZENS OF THE COUNTY IN UNINCORPORATED AREAS IF SUCH COUNTY LEGISLATION DOES NOT APPLY IN ALL MUNICIPALITIES LOCATED IN THE COUNTY. THE ISSUES SHALL BE DECIDED BY THE COURT WITHOUT A JURY. IN THE EVENT THAT THE COURT REVERSES SUCH FINDING, THE LEGISLATION SHALL CONTINUE TO APPLY IN UNINCORPORATED AREAS OF THE COUNTY AND THE APPLICABILITY OF SUCH COUNTY LEGISLATION IN MUNICIPALITIES SHALL BE GOVERNED BY THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION. THE DECISION OF THE CIRCUIT COURT IN ANY SUCH PROCEEDING SHALL BE SUBJECT TO FURTHER APPEAL TO THE COURT OF SPECIAL APPEALS BY THE COUNTY OR ANY MUNICIPALITY IN THE COUNTY.

(C) EXCEPTION TO APPLICABILITY OF CERTAIN COUNTY LEGISLATION. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B)(3) OF THIS SECTION, COUNTY LEGISLATION ENACTED IN ACCORDANCE WITH THE PROCEDURES AND REQUIREMENTS THEREOF SHALL NEVERTHELESS BE OR BECOME INAPPLICABLE IN ANY MUNICIPALITY WHICH HAS ENACTED OR ENACTS MUNICIPAL LEGISLATION THAT (1) COVERS THE SAME SUBJECT MATTER AND FURTHERS THE SAME POLICIES AS THE COUNTY LEGISLATION; (2) IS AT LEAST AS RESTRICTIVE AS THE COUNTY LEGISLATION; AND (3) INCLUDES PROVISIONS FOR ENFORCEMENT.

(D) ENFORCEMENT OF MUNICIPAL LEGISLATION BY COUNTIES. ANY MUNICIPALITY MAY, BY ORDINANCE, REQUEST AND AUTHORIZE THE COUNTY

WITHIN WHICH IT IS LOCATED TO ADMINISTER OR ENFORCE ANY MUNICIPAL LEGISLATION. UPON THE ENACTMENT OF SUCH AN ORDINANCE, SUCH COUNTY MAY ADMINISTER OR ENFORCE SUCH MUNICIPAL LEGISLATION ON SUCH TERMS AND CONDITIONS AS MAY MUTUALLY BE AGREED.

(E) DEFINITIONS. AS USED IN THIS SECTION (1) "COUNTY" SHALL MEAN ALL FORMS OF COUNTY GOVERNMENT, INCLUDING CHARTER HOME RULE, CODE HOME RULE AND COUNTY COMMISSIONERS; (2) "LEGISLATION" SHALL MEAN ALL FORMS OF COUNTY OR MUNICIPAL LEGISLATIVE ENACTMENT, INCLUDING A LAW, ORDINANCE, RESOLUTION, OR ANY RULE OR REGULATION ADOPTED UNDER THE AUTHORITY OF ANY OF THE FOREGOING.

2B.

THE EXPRESS POWERS CONTAINED AND ENUMERATED IN ARTICLES 25, 25A AND 25B OF THE ANNOTATED CODE OF MARYLAND ARE INTENDED TO BE AND SHALL BE DEEMED AMENDED AND MODIFIED AS PROVIDED IN §2A.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect _____ .

MML

MARYLAND MUNICIPAL LEAGUE

76 Maryland Avenue, Annapolis, Maryland 21401

December 16, 1982

M. Peter Moser
Frank, Bernstein, Conaway & Goldman
1300 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, MD 21201

Dear Pete:

This letter is in answer to your request of December 14th, that the League indicate to you in writing some our concerns with the 12/10/82 Draft of Amendments to Section 2, Article 23A. The actions of the Task Force have resolved some of our concerns such as deleting Sections 3 and 4 because they were unnecessary, tying (b) 2, Revenue & Taxation to the authority of Article 81, and deleting the term "public local law" in Section (e).

However, we do have major reservations regarding Section (b) (5). There still have not been any specific examples presented outlining a situation involving "significant adverse impact." We understand that the main concern voiced by several delegates is the establishment of county emergency authority to override municipal authority for the purpose of protecting public health and safety in unusual circumstances, but as I pointed out on December 14th, the State Code is filled with specific references to state authority in every emergency from civil insurrection to air pollution, (see attached). The Governor has clearly defined powers in Article 41, Section 15B regarding emergencies.

Additionally, we are concerned with the 90 day emergency provision, Section (b) (v). Again, in a major emergency, state authority to act is already law. And as we indicated at the work session, the word "emergency" may be, and has been attached to legislation that was an emergency only in the sense of having it be effective immediately.

We appreciate having the opportunity to voice our concerns regarding this draft legislation, and we wish to continue working with all interested parties in an attempt to reestablish the relationship between counties and municipalities that has been historically defined.

Sincerely,

Jon C. Burrell
Executive Director

JCB/cmb

Exhibit B

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Emergency Powers

Air Pollution (HE Sec. 2-105)
Secretary of Health and Mental Hygiene shall advise Governor of existing or impending emergency. Governor may order elimination of sources of pollution. Attorney General may sue to force compliance.

Rental Housing (RP Sec. 11-140)
A County, Municipality, or Baltimore City may declare an emergency within its jurisdiction and take actions enumerated in Section 11-140.

Public Crisis, Disaster, Rioting (Article 41 Section 15 B).
Governor may declare state of emergency on his "own volition" or at asking of county, city, or local municipality. Governor promulgates necessary orders to protect life and property, (also in energy shortage).

Hazardous Materials (HE Sec. 7-263)
If emergency exists, DHMH may sue to stop threatening activity.

Radiation (HE Sec. 8-105)
When an emergency exists, the Secretary of H&MH may require any action he "finds necessary to meet the emrgency."

Drinking Water (HE Sec. 9-406)
Secretary of H&MH must adopt emergency plan. If emergency exists, Secretary "may take any action necessary," to provide safe drinking water.

Water Pollution (HE Sec. 9-339)
If emergency arises, DHMH may sue for an immediate injunction to stop any pollution.

Civil Defense (Art. 16A):

Section 6A Declared by Governor if a "state of emergency exists"

6B "major disaster" proclamation - more serious than "emergency"

6D Political subdivisions may declare a "local state of emergency"

7 Each political subdivision shall establish a CD organization

33 If mayor or town council are killed, sick, missing, etc. County governing body appoints replacements - Governor may also if necessary - or Governor may operate the municipal government. (If county officials are gone - then Governor appoints replacements - Sec. 32)

35 Grants special powers to county governing body if all or part of county is within a civil defense emergency or disaster area

*may borrow money or levy special taxes

*may make special arrangements with other governmental units for materials or services